

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**MOTION HEARING**

BEFORE THE HONORABLE DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES : SEE NEXT PAGE

(Recorded via CourtSpeak.)

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1                   HOUSTON, TEXAS; MONDAY, JULY 10, 2023; 1:00 P.M.

2                   THE COURT: All right. And good afternoon,  
3 everyone. This is Judge Jones. The time is 1:00 o'clock  
4 Central, today is July the 10th, 2023. This is the docket for  
5 Houston, Texas.

6                   On the 1:00 o'clock docket, we have the jointly  
7 administered cases under Case Number 23-90147, Mountain  
8 Express Oil Company.

9                   Folks, please don't forget to record your electronic  
10 appearance. It's a quick trip to my website. You can do that  
11 at any time prior to the conclusion of this afternoon's  
12 hearing, but it is the way that we note your official  
13 appearance this afternoon.

14                  If you did choose to speak, if you're in the  
15 courtroom, please come to the lectern, so that you can both be  
16 seen and be heard.

17                  If you are on -- if you are participating by  
18 GoToMeeting -- ah, I'll try to leave everything open until we  
19 hear some background noise. But if I do that, then you'll  
20 need to hit five star in order to be heard.

21                  We are recording this afternoon using CourtSpeak.  
22 We'll have the audio up on the docket shortly after the  
23 conclusion of the hearing.

24                  All right. Who is taking the lead this afternoon  
25 for the Debtors? Mr. Kadden.

1                   MR. KADDEN: Good afternoon, Your Honor. Benjamin  
2 Kadden, here with me today is Ben Wallen, on behalf of  
3 Mountain Express.

4                   THE COURT: All right. Do you want to just take a  
5 couple of minutes and tell me where we are?

6                   MR. KADDEN: Yes, Your Honor.

7                   So, over the course of the last two weeks, with the  
8 help of the New York dealer's new counsel, we have  
9 successfully completed all of the compliance inspections.

10                  THE COURT: Okay.

11                  MR. KADDEN: And then, with the help of M&Y Pump  
12 last Thursday and Friday, each of the six stores were put back  
13 onto the Phillips 66 credit card system, the black boxes were  
14 restored, so that we're now in a position to both sell fuel  
15 and track fuel sales and collect inventory.

16                  There have been deliveries made, I think, to four of  
17 the six over the weekend, and all six are back regularly  
18 scheduled deliveries today. So I guess, Your Honor, from the  
19 standpoint of getting back into compliance, that's the good  
20 news part.

21                  The bad news part is that we still believe that  
22 there is in excess of \$500,000 of fuel that was in the tanks  
23 at the time that the credit card systems were switched and  
24 that was fuel that was an asset of the estate because these  
25 are stores that sell on a commission basis.

1                   And at Your Honor's suggestion, we have worked to  
2 segregate these costs associated with this issue and we're  
3 looking at probably a million dollars between the fuel  
4 inventory that was taken, lost profits for all the time, and  
5 considerable time and effort and an unnecessary amount of  
6 hassle.

7                   Now, fortunately, their new counsel has helped to  
8 get them back on a good path. But what I would like to come  
9 out of this hearing with is a hearing for us to prove up our  
10 entitlement to compensatory sanctions sometime in mid-to-late  
11 August.

12                  The Debtor is running a sales process and I want to  
13 be mindful of allowing Mr. Healy and the other professionals  
14 the opportunity to focus on that sales process and not be  
15 focused on dealing with questions from me to prepare for an  
16 evidentiary hearing.

17                  THE COURT: All right. So I just want to make sure  
18 I understand. So you think, as we sit here today, the  
19 continuing wrongful acts have stopped and that now we're  
20 dealing with simply trying to figure out the harm caused by  
21 the acts in the first place. Is that where we are?

22                  MR. KADDEN: Yes, Your Honor.

23                  THE COURT: All right. Ms. Tran.

24                  MS. TRAN: Your Honor, I -- we would not oppose --

25                  THE COURT: Can I ask you to come up? Just because

1 everyone won't be able to hear you or see you.

2 MS. TRAN: Sorry, Your Honor.

3 Your Honor, we would not be opposed to a setting in  
4 August.

5 And my clients are -- I believe we're in compliance.  
6 We've been working with the Debtors over the last two weeks to  
7 make sure that we're -- everything is in order.

8 THE COURT: Okay. Have we been able to get our  
9 hands around why it happened in the first place?

10 MS. TRAN: Your Honor, there seems to be a  
11 disconnect. From my discussions with my clients, you know,  
12 they're very apologetic for the disconnection. And you know,  
13 they were trying to do what they thought was best and, you  
14 know, they're very sorry about that.

15 But they did dis -- they did initially disconnect  
16 the credit card machines because there was inconsistent fuel  
17 deliveries. And Mr. Kadden says that they received \$500,000  
18 of fuel delivery, but for us, that never happened. They  
19 actually had to purchase third-party fuel, which is why they  
20 disconnected the credit card machines in the first place. So  
21 that's something that I think we still need to figure out what  
22 happened there.

23 We do have the purchases for the third-party fuel  
24 and the receipts showing that there was no fuel that was  
25 delivered. So I think an evidentiary hearing might --

1                   THE COURT: Okay. I just want to make sure I  
2 understand.

3                   So the Debtors think that a significant amount of  
4 fuel was delivered and you believe that it just wasn't.

5                   MS. TRAN: That's right, Your Honor.

6                   THE COURT: I mean, it's been my experience in  
7 dealing with these things there are tickets signed when  
8 anything goes onsite.

9                   Am I wrong about that, Mr. Kadden?

10                  MR. KADDEN: Your Honor, yes, that would be the  
11 focus of the evidentiary hearing, would be both delivery  
12 tickets, but in addition to the credit card system, they also  
13 have what's been referred to as "black boxes" that track  
14 what's in the ground at any given time.

15                  THE COURT: Right.

16                  MR. KADDEN: And so the numbers that I've been  
17 provided are based on what was being tracked at the time that  
18 the credit card system was going offline and what was  
19 delivered. And you know, we will be prepared to put on  
20 evidence --

21                  THE COURT: I got it.

22                  MR. KADDEN: -- as to what was delivered.

23                  THE COURT: I'm just trying to figure out how much  
24 time you need for discovery, is what I'm really trying to work  
25 my way through.

1                   Committee have views on this, Mr. Gibbs?

2                   MR. GIBBS: Good afternoon, Your Honor. Chuck Gibbs  
3                   with McDermott, Will & Emery, counsel for the Committee.

4                   We're supportive of the suggested resolution of  
5                   leaving this to an evidentiary hearing as to the extent of the  
6                   damages. Obviously, the Committee is vitally interested in  
7                   recovering assets of the estate. We're happy to hear of the  
8                   progress made and the cessation of wrongful behavior. But I  
9                   can't really weigh in on how long it's going to take the  
10                  litigants to get ready, but we'll go with whatever the Court  
11                  says.

12                  THE COURT: All right. I got it.

13                  MR. GIBBS: Thank you.

14                  THE COURT: So, Ms. Tran, let me -- I want to -- I  
15                  want your clients to listen to me.

16                  What you all did was wrong. And if I didn't trust  
17                  your lawyer, there would be marshals in here today, and I  
18                  don't wish that on anybody. That's not the country we live  
19                  in, that's not the way people ought to treat one another. But  
20                  don't put me in that position. If you want something, you  
21                  come ask me. You don't self-help. Okay?

22                  All right. So, if everybody would look at their  
23                  calendars. Today is July the 10th. And I'll find a day, but  
24                  I just don't think 30 days is enough for you to work your way  
25                  back through all these things and figure out -- you know,

1 figure out what you're doing. You're going to have to have --  
2 my guess is you're going to end up having competing experts,  
3 to some degree. But if you want a hearing, you know, middle  
4 to end of August, I'll find a time for you.

5 I just -- what I don't want to do -- because these  
6 folks are all going to come back -- I don't want to give you a  
7 date and then you all show up and say we're not ready. That's  
8 -- I just want to make sure we only do this once.

9 MR. KADDEN: Well, Your Honor, the reason for, I  
10 guess what I'll call an "expedited schedule" is that this  
11 Debtor is being crushed by dealers not taking their financial  
12 and performance obligations seriously. We had \$1.6 million in  
13 rent bounce in July. This is creating significant liquidity  
14 issues.

15 And to the extent that my clients are correct and  
16 they've absconded with \$500,000 worth of fuel, that's  
17 something that we need to take immediate action on because of  
18 liquidity concerns. And fortunately/unfortunately for me --

19 THE COURT: Let me stop you --

20 MR. KADDEN: I'm sorry.

21 THE COURT: -- right there. No, no, no.

22 You know, the liquidity issue caused by other  
23 people, I could care less about. That's another hearing,  
24 another day.

25 If these folks took \$500,000 worth of fuel -- and I

1           don't know whether they did or not -- \$500,000 is the least of  
2           their problems. And that's why I want to make sure that  
3           everybody has got ample opportunity to take whatever discovery  
4           is needed to -- I want to make sure that due process is  
5           served.

6                         And again, if you all tell me that you can be ready  
7                         in August, fine by me.

8                         But what I may end up doing to these folks if they  
9                         don't reach a resolution with the Debtors and if they did  
10                        what's alleged to have been done, I'm not going to shortcut  
11                       the process.

12                       So tell me, Ms. Tran -- I mean, this is, in large  
13                       part, your clients. I want to make sure that you have enough  
14                       time to get ready and that you have -- I want to see your best  
15                       case because, again, you know me. If they did what's alleged,  
16                       I'm going to be incredibly harsh. Now, if they didn't do  
17                       what's alleged to have been done, then I'm going to go equally  
18                       the other way. So I just want to make sure that you have  
19                       enough time to get to the truth.

20                       MS. TRAN: Yes, Your Honor. I think we probably  
21                       would need more time than just the end of August. We do have  
22                       -- we do have a lot of the receipts that we can --

23                       THE COURT: Okay.

24                       MS. TRAN: -- share with Mr. Kadden and that's --

25                       THE COURT: Why don't we --

1 MS. TRAN: -- that's fine --

2 THE COURT: -- do this?

3 MS. TRAN: -- but --

4 THE COURT: Let's see. I have all day on September  
5 the 6th, if that would work.

6 MR. KADDEN: That's fine, Your Honor.

7 THE COURT: Mr. Kadden?

8 And Mr. Gibbs, does that work for you?

9 MR. GIBBS: Yes, Your Honor.

10 THE COURT: Ms. Tran?

11 MS. TRAN: I will actually be out of town, Your  
12 Honor.

13 THE COURT: Okay.

14 MS. TRAN: Can we do the following week, if  
15 possible?

16 THE COURT: How about the 12th?

17 (Participants confer)

18 MR. KADDEN: That would work for me, Your Honor.

19 THE COURT: All right. Then we'll reserve the whole  
20 day on September the 12th. Let's start -- you folks will come  
21 in the night before, is that -- okay. So let's just start at  
22 9:00 o'clock, so hopefully we get it done in a day.

23 I would like for you to exchange Witness and Exhibit  
24 Lists by close of business on the 7th.

25 Can you do that if you're going to be out of town

1                   that week, Ms. Tran?

2                   MS. TRAN: You know, I take my computer everywhere I  
3                   go.

4                   THE COURT: Okay. All right. So Witness and  
5                   Exhibit Lists exchanged on the 7th.

6                   Is the Committee going to put on any additional  
7                   witnesses or just tag along with the presentation?

8                   MR. GIBBS: We'll tag along, Your Honor. I don't --  
9                   we don't anticipate putting on any witnesses.

10                  THE COURT: All right.

11                  MR. GIBBS: But we haven't really coordinated that  
12                  fully with the Debtors yet.

13                  THE COURT: All right. Thank you.

14                  And I know all three of you. Do I need -- do I need  
15                  any scheduling orders or can you all just work backwards and  
16                  work together?

17                  MR. KADDEN: No, Your Honor. I think we will play  
18                  nicely.

19                  THE COURT: All right. And again, folks, you listen  
20                  to your lawyer, number one. But you -- if you did what  
21                  Mr. Kadden alleged has been done, you don't want to bring this  
22                  back to me. If you didn't do it, then give every scrap of  
23                  paper that supports your position to Ms. Tran and let her  
24                  fight for you. And then come back and show me what you did.

25                  Okay? All right. Any questions?

1 MS. TRAN: No.

2 THE COURT: All right. Then I'll note the  
3 appearance and compliance with my order. We've set an  
4 evidentiary hearing all day on the 12th.

5 Is there anything else that we need to address this  
6 afternoon?

7 MR. KADDEN: No, Your Honor.

8 THE COURT: All right. And if you've got other  
9 issues out there, then I'm here. But these folks, it's their  
10 day, their issues. They're not going to be affected by what  
11 anyone else did or didn't do.

12 MR. KADDEN: Understood.

13 THE COURT: Okay?

14 MR. KADDEN: I have no doubt we will be in front of  
15 you soon with a couple of different issues, but that will come  
16 for that day.

17 THE COURT: All right. Thank you.

18 Then we'll be adjourned until 2:00 o'clock.

19 MR. KADDEN: All right. Thank you, Your Honor.

20 THE COURT OFFICER: All rise.

21 (Proceedings concluded at 1:13 p.m.)

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1               *I certify that the foregoing is a correct transcript  
2 to the best of my ability produced from the electronic sound  
3 recording of the proceedings in the above-entitled matter.*

4               /S./ MARY D. HENRY

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